

BEFORE THE OREGON DEPARTMENT OF AGRICULTURE

In the Matter of Kevin DeJager,)	NOTICE OF NONCOMPLIANCE
Db a Diamond Valley Dairy)	AND PLAN OF CORRECTION
Registrant to OREGON CAFO NPDES)	#1828858
General Permit No. 01-2016,)	
Master Address No. 181309.)	<u>Sent via certified and regular mail.</u>

I. BACKGROUND

Pursuant to its authorities, the Oregon Department of Agriculture ("ODA" or "department") and the Oregon Department of Environmental Quality have issued Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit No. 01-2016 issued to Kevin DeJager. Oregon Revised Statute (ORS) 468B, and Oregon Administrative Rules Chapter 340, Divisions 40, 45, and 51, and Chapter 603, Division 74 (OAR) Any person owning or operating a CAFO must seek coverage under the Oregon CAFO National Pollutant Discharge Elimination System (NPDES) General Permit No. 01-2016 or an Individual NPDES CAFO Permit or, the Oregon CAFO Water Pollution Control Facilities (WPCF) General Permit No. 01-2015 and must comply with the permits terms, ORS 468B.050. OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025. A Notice of Noncompliance (NON) informs the owner or operator of a violation, including a reference to a particular statute, administrative rule, or order involved, the location of the violation and the consequences of the violation or future violations. OAR 603-074-0040(1)(a).

The department herein finds that Kevin DeJager, ("registrant" or "permittee"), dba Valley Dairy Diamond, is in violation of the Oregon CAFO Special Conditions: **S2.A.1 Prohibitions and Discharge Limitations**, for discharging process wastewater to surface water, via leakage or seepage from facilities in the production area; **S4.B.1 Inspection Requirements**, for failing to inspect liquid impoundments for manure and process waste water; and **General Condition G6 Proper operation and maintenance**, for failing to properly operate and maintain all facilities and systems used for collection, storage, and utilization.

II. NOTICE OF NONCOMPLIANCE ("NON")

A. Findings of Fact

1. Kevin DeJager operates a Large Concentrated CAFO at 3798 Valley Creek Rd NW, Salem, in Polk County, under the Oregon CAFO NPDES General Permit No. 01-2016 (issued on July 21, 2016) and administered by ODA. Permit registration of Kevin DeJager, dba Diamond Valley Dairy, is under Master Address No. 181309.

2. The CAFO NPDES General Permit No. 01-2016 contains the following special and general conditions:

S2.A.1, Prohibitions and Discharge Limitations, which reads, in part:

The permit registrant must not discharge manure, litter, or process wastewater to surface water and groundwater of the state except as allowed in S2.B and S2.C and provided these discharges do not cause or contribute to a violation of State groundwater quality protection standards.

Types of discharge that are prohibited include but are not limited to: contaminated runoff from confinement or waste accumulation areas; overflow or discharges from waste storage facilities; discharges due to improper land application activities from surface drainages, field tile outlets, or seepage below the root zone, dry-weather discharges; discharges due to equipment failure; leakage or seepage from facilities in the production area in excess of approved designs; and discharges to underground injection control (UIC) systems.

S4.B.1, Inspection Requirements, which reads, in part:

1. The permit registrant must conduct the following inspections:

Item	Large CAFO	All Other Operations
(a) Stormwater diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated stormwater to wastewater and manure storage and containment structures	Weekly and record results	At least once every six months
(b) Water lines, including drinking water or cooling water lines	Daily and record results	At least once every six months
(c) Equipment used for land application of manure, litter, or process wastewater	Daily when equipment is in use and record results	At least once every six months when equipment is in use
(d) Liquid impoundments for manure and process wastewater	Weekly and record depth of manure and process wastewater according to depth marker required by S2.E.3, p.11	At least once every six months

General Condition G6 Proper operation and maintenance, which reads, in part:

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are

installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3. On May 21, 2018, the department received a complaint from Mr. Stanley that his small freshwater pond smelled like sewage, had a film on the surface, and his fish were dying. The pond on Mr. Stanley's property is located immediately downstream from the dairy property.

4. On May 21, 2018, the department conducted a complaint inspection at your facility and your neighbor's pond. During this inspection, water samples were taken at 6 locations. The sample results showed that water quality standards for bacteria were exceeded. No apparent discharge was observed, and no dead fish or other deceased wildlife were observed on the DeJager freshwater pond surface.

5. On May 23, 2018, you were issued Water Quality Advisory #1827013 (WQA) for the water quality standard exceedance. The WQA included the following recommended corrective action:

1. Take all steps necessary to eliminate any discharges from the production area, including the fresh water pond.

6. On December 3, 2018, the department received a second complaint, from Mr. Stanley, stating that his pond still smelled like sewage, had a film on the surface, and everything in and around it was dead.

7. On December 3, 2018, a department representative conducted a complaint inspection at your dairy facility and at the complainant's pond. While viewing your fresh water pond, the department representative noticed white bubbles located in the middle of the pond. The white bubbles appeared to be milk. You explained that the nearest source of milk was in the adjacent calf barn, which had a clean water drain that was connected to the fresh water pond via a buried pipe. Upon viewing the drain inside the barn, the representative noted a portable milk tank (used for hauling calf milk) was parked over the drain (near the pasteurizer). The representative also noted residual milk in and around the drain. The representative asked how the pasteurizer and calf milk feeding system was operated and you explained that it looked like your employees were letting waste milk, and pasteurized, overflow milk enter the drain. You stated that you had directed your employees to use the drain only for clean water. The representative requested that you direct employees to immediately cease any discharge into the drain and plug the drain immediately.

Also on December 3, 2018, the representative pulled four surface water samples from the dairy's fresh water pond's inlet and outlet, to be tested for E.coli and DNA. (Map enclosed). Prior to the representative leaving the facility, the ODA representative noted that you had put a rubber plug in the drain, that would plug it until a permanent fix could be done. The representative filled out an inspection report showing FIRP (Final Inspection Results Pending), pending the water sample results.

After leaving the dairy, the representative arrived at your neighbor's property to view and sample his pond. The pond was noted to smell bad and had a film on the water's surface. The representative pulled one water sample from his pond, to be tested for E.coli.

The department representative hand-delivered the water samples to ODA's Laboratory in Portland for analysis.

8. On December 4, 2018, the department received the results of the water samples. While all of the water samples exceeded the state standard of 406 CFU/100 ml of sample, the sample out of the dairy freshwater pond's outlet had the highest bacterial number of all the samples collected.

B. Ultimate Findings of Fact

1. Permittee, Kevin DeJager is operating a Large Concentrated CAFO, Diamond Valley Dairy registered to the Oregon CAFO National Pollutant Discharge Elimination System (NPDES) General Permit No. 01-2016, under Master Address No. 181309.

2. On or before December 3, 2018, the Permittee violated the following permit's Special and General Conditions:

S2.A.1 Prohibitions and Discharge Limitations, S4.B.1 Inspection Requirements, and General Condition G6 Proper operation and maintenance, of the Oregon CAFO NPDES General Permit No. 01-2016.

C. Conclusions of Law

1. Permittee violated special conditions **S2.A.1 Prohibitions and Discharge Limitations, S4.B.1 Inspection Requirements, and General Condition G6 Proper operation and maintenance**, of the Oregon CAFO NPDES General Permit No. 01-2016.

III. PLAN OF CORRECTION (POC)

The actions and timetable required to bring Diamond Valley Dairy into compliance with special conditions **S2.A.1 Prohibitions and Discharge Limitations, S4.B.1 Inspection Requirements, and General Condition G6 Proper operation and maintenance**, of the Oregon CAFO NPDES General Permit No. 01-2016 are as follows.

RA#1: Cease all unauthorized discharges of waste milk, manure or process wastewater from the dairy into the freshwater pond. This includes maintaining the plug in the calf barn drain, so no waste milk or process wastewater can enter the drain and therefore enter the fresh water pond.

RA#2: By December 31, 2018, submit a proposal and construction approval request to permanently collect and direct all waste milk and process wastewater generated in the calf barn to the existing, ODA-approved Below Ground Liquid Tank. The proposal must include permanently capping, rendering inoperable or removing any pipe or infrastructure that could discharge manure, waste milk or process wastewater into the freshwater pond.

RA#3: Within 14 days of receipt of the ODA construction approval, complete all the approved construction and system decommissioning as described in the ODA approval request document issued as described in RA #2.

RA#4: By January 20, 2019, inspect and evaluate all animal confinement areas, feed storage areas and liquid or solid manure, feed waste, contaminated stormwater or process wastewater collection, transfer and storage systems to determine that they do not discharge into the fresh water pond. Develop a written report that describes all locations and infrastructure evaluated and the outcomes of those evaluations. ODA representatives will evaluate the report.

RA #5: By June 1, 2019, excavate a trench along the southern side of your fresh water pond. This trench needs to be deep enough to discover any pipes that could drain any part of the dairy production area to the fresh water pond. A department representative will inspect the trench prior to backfilling. Any pipes discovered that have unknown origin or purpose must be decommissioned. Also, by June 1, 2019, remove the beaver dam blockage on and around the fresh water pond exit (overflow) culvert, and repair the erosion damage to the pond embankment from the diverted pond outflow. Conduct weekly monitoring of the fresh water pond outlet pipe to ensure that it is functioning properly and not plugged.

IV. CONCLUSION

ODA may issue a Notice of Civil Penalty Assessment (NCPA) for violations noted in this NON/POC. If permittee, Kevin DeJager, dba Diamond Valley Dairy, fails to timely comply with any part of the POC described above, ODA may issue an NCPA regarding new violations. ORS 468B.230. OAR 603-074-0040. In addition, failure to timely comply with this NON/POC may lead ODA to take additional enforcement actions including, but not limited to, revocation of permittee's registration to Oregon CAFO NPDES General Permit No. 01-2016. ORS 468B.215(4).

DATED this 21st day of December 2018.



Stephanie Page, Director
Natural Resources & Pesticide Programs
PH (503) 986-4713
spage@oda.state.or.us

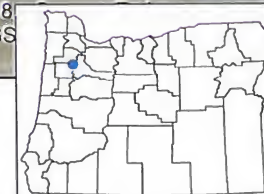
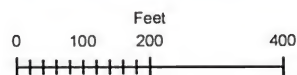
NOTICE OF APPEAL RIGHTS: This is an order in other than a contested case. This order is subject to judicial review under Oregon Revised Statutes (ORS) 183.484. A petition for judicial review must be filed within 60 days of the date this order is served, as specified by ORS 183.484(2). You may also request reconsideration of this order by filing a petition for reconsideration with the department within 60 calendar days after the date of the order, OAR 137-004-0080. A petition for reconsideration must set out the specific grounds for reconsideration and may be supported by a written argument.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-7500, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

Attachment: Water sample map

cc: Wym Matthews, ODA CAFO Program Manager
Charlene Olson, ODA Livestock Water Quality Specialist

Diamond Valley Dairy
MA# 181309
December 03, 2018



LABORATORY SERVICES
Phone: (503) 872-6644
EXPORT SERVICE CENTER
Phone: (503) 872-6630
FAX: (503) 872-6615



OREGON DEPARTMENT OF AGRICULTURE
1207 NW NAITO PARKWAY, STE 204
PORTLAND, OREGON 97209-2835
Laws and Regulations Administered by
Natural Resources Division: (503) 986-4700

REPORT OF LABORATORY ANALYSIS - CAFO SAMPLES

Requesting Division:
ODA, Natural Resources Division
635 Capitol St. NE
Salem, OR 97301
Contact: Wym Matthews

Sample Source:
Diamond Valley Fresh Pond
, OR

Sampled at: Diamond Valley Fresh Pond
Date Sampled: 12/ 3/18 Sampled by: Charlene Olson
Date Received : 12/ 3/18 Time Received 14:05 Received by: Bdinntorn B. Nuanual
Analysis began: 12/ 3/18 at 15:15

Method of Sampling: Grab & Iced
Reason for Sampling: Complaint
Related Samples:

SAMPLE IDENTIFICATION & ANALYTICAL REPORT

Laboratory Number: 18-A5527 Sample Number: 1828857B
Time Sampled: 11:13 Site Information: Culvert out of pond

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	70,000 MPN/100ml	TAJ

Laboratory Number: 18-A5529 Sample Number: 1828857D
Time Sampled: 11:29 Site Information: Creek into pond

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	2,100 MPN/100ml	TAJ

Laboratory Number: 18-A5530 Sample Number: 1828857E
Time Sampled: 12:04 Site Information: Stanley pond

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	4,300 MPN/100ml	TAJ

Reviewed by: 

Date: 12/ 4/18



UNIVERSAL SAMPLE COLLECTION AND LABORATORY ANALYSIS REQUEST FORM

Requesting Division/Agency/Firm

ODA-CAFD

Address

Phone

Contact Person

Accounting Information

Source/Establishment/Registrant

Name: Diamond Valley Fresh pond

Address:

Sampled At

fresh pond

Establishment/Lic. No.

Date/Time Collected

12-3-18

Sample(s) Collected By

C. Olson

Method of Sampling and Sample Preparation

Grab & Ice

Related Samples

1828857 A-E

Reason for Sampling

Complaint

Date Received in Laboratory

2/3/22

Received By

[Signature]

Shipment Temperature Controls

Product

Sampling Loc.

C

F

Sample Number	Laboratory Number	Sample Type/Product/Brand	Code/Pull Date	Container Size	Test(s) Requested
1828857 A	18A-5526	1113		250ml	DNA filter & freeze
1828857 B	18A-5527	1113			E. coli
1828857 C	18A-5528	1113			DNA filter & freeze
1828857 D	18A-5529	1113			E. coli
1828857 E	18A-5530	1214pm Stanley pond		250ml	E. coli

REMARKS:

TC 12/18 - 0.5L/61.0/5.6